

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION

UNITED STATES OF AMERICA, : CASE NO.
Plaintiff : 1:04-CR-00301
VS. :
ARTHUR GARCIA, : Harrisburg, PA
Defendant : 7 September 2007
.....: 1:30 p.m.

TRANSCRIPT OF RE-SENTENCING HEARING
BEFORE THE HONORABLE CHRISTOPHER C. CONNER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

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For the Defendant:

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P R O C E E D I N G S

THE COURT: Good afternoon. Please be seated.

MR. CARLSON: Good afternoon, Your Honor.

THE COURT: Good afternoon, Mr. Carlson.

MR. CARLSON: This is time and place set for the resentencing in the case of United States of America versus Arthur Garcia. It is this court's criminal number 1:CR-04-301. This matter comes before the court for the purpose of resentencing following remand from the Court of Appeals. Mr. Garcia is present in the courtroom represented by his counsel Mr. Lord. The original prosecutor in this case, Mr. Clancy, is ill, and I am standing in for him for purposes of this proceeding.

THE COURT: Thank you, Mr. Carlson. By way of background to today's proceeding, the defendant pled guilty in August 2005 to using a facility of interstate commerce, the internet, to knowingly persuade, induce, entice, and coerce an individual who had not attained the age of 18 years to engage in sexual activity, for which a person can be charged with a criminal offense and did attempt to do so, in

1 violation of Title 18 of the United States Code,
2 Section 2422(b), and knowingly traveling in
3 interstate commerce for the purpose of engaging
4 in elicit sexual conduct with another person, in
5 violation of Title 18 of the United States Code,
6 section 2423(b).

7 A sentencing proceeding was held on January
8 25, 2006 in which the court addressed the
9 defendant's objections to the presentence
10 report. First, the court overruled the
11 defendant's contention that any facts relevant
12 to the sentencing enhancements must be proven by
13 clear and convincing evidence or beyond a
14 reasonable doubt.

15 Second, the court sustained the defendant's
16 objection to the cross reference from Section
17 2G1.1C2 to the criminal sexual abuse guideline
18 of Section 2A3.2 of the sentencing guidelines,
19 and instead I applied Section 2A3.2 of the
20 guidelines. By sustaining this objection,
21 defendant's objection to the two-level increase
22 based on the victim's age under Section 2A1.3B2B
23 became moot.

24 Third, the court overruled the defendant's
25 objection to the two-level enhancement for the

1 use of a computer under section 2A3.2B3.
2 Fourth, the court overruled the defendant's
3 objection to the two-level enhancement for
4 misrepresentation and undue influence under
5 2A3.2B2. Finally, the court rejected the
6 defendant's challenge to the authority of
7 Congress to require a mandatory minimum term of
8 imprisonment of five years under Title 18 of the
9 United States Code, Section 2422(b).

10 Based on these rulings, and an upward
11 departure, the court sentenced the defendant to
12 serve a term of imprisonment of 100 months, to
13 be followed by a five-year term of supervised
14 release, and to pay a fine of \$1,200, fined an
15 assessment of \$1,200, and restitution of \$876.
16 Following an appeal by the defendant in April of
17 2007 the Court of Appeals for the Third Circuit
18 affirmed the court's decision to apply a
19 two-level enhancement for the use of a computer
20 under section 2A3.23B, but remanded for
21 sentencing because the court did not provide
22 notice to the defendant that it was
23 contemplating an upward departure.

24 I will say that while counsel may also
25 raise any other matters relevant to the

1 imposition of sentence at this proceeding, you
2 need not reargue points or reintroduce evidence
3 addressed during the original sentencing
4 proceedings. I have reviewed a transcript of
5 those proceedings carefully. I have a copy at
6 the bench if we need to refer to it, and that
7 would include counsel's prior submissions, and
8 absent some well grounded objection I intend to
9 rely on those matters in resolving disputed
10 issues for purposes of resentencing, but
11 obviously I'm prepared to accept any new and
12 additional arguments you may have.

13 The court has also reviewed the defendant's
14 resentencing memorandum and supplemental
15 memorandum. Following counsels' presentations
16 and after the defendant has been given the right
17 of allocution the court will impose an
18 appropriate sentence based upon a *de novo* review
19 of the entire record and obviously taking into
20 consideration the Third Circuit case law that
21 has established the appropriate procedure for
22 sentencings post-Booker, specifically in
23 accordance with the recent Third Circuit
24 decisions in United States vs. Gunter, 462 F.3d
25 237, and United States vs. Jackson, 467 F.3d

1 834, the 2006 Third Circuit cases, I am required
2 to engage in a three-step process.

3 First I will calculate the advisory
4 guideline range in accordance with pre-Booker
5 procedure. Second, I will formally rule on any
6 motions for departure and state the impact, if
7 any, of such rulings on the guideline
8 calculation, and third I will exercise
9 discretion and consider all of the factors set
10 forth in Title 18 of the United States Code,
11 Section 3553, in setting a sentence which may in
12 fact vary from the guideline sentencing range.

13 In this case a presentence report was
14 prepared by the probation office and distributed
15 to the court and the parties during the prior
16 sentencing proceedings in this case. Does
17 either party wish to raise additional objections
18 to the presentence report? And I'm not asking
19 for any Section 3553(a) argument at this time.
20 Mr. Carlson?

21 MR. CARLSON: No, Your Honor.

22 THE COURT: Mr. Lord?

23 MR. LORD: No, Your Honor.

24 THE COURT: Very well. After considering
25 all of the matters that have been raised, that

1 were previously raised by the parties, and
2 considering that there are no additional matters
3 that have been raised at this proceeding, the
4 court reaffirms its prior rulings on the
5 objections to the presentence report for the
6 same reasons set forth on the record during the
7 original sentencing proceeding.

8 By sustaining defendant's objection to the
9 cross reference to the criminal sexual abuse
10 guideline under Section 2A3.1, the base offense
11 level is 24 under Section 2A3.2A1. The
12 enhancement for use of a computer under 2A3.2B3
13 increases this offense level by two levels.
14 A two-level enhancement also applies for
15 misrepresentation and undue influence under
16 2A3.2B2.

17 For the government's motion a three-level
18 reduction applies for acceptance of
19 responsibility, and with those findings and
20 exceptions the court adopts the findings of the
21 presentence report in their entirety except as
22 modified. The defendant's offense level is 25
23 and his criminal history category is 1.

24 The corresponding guideline range is 57 to
25 71 months, but the statutory minimum penalty is

1 60 months under Title 18 of the United States
2 Code, Section 2422(b) and Section 5G1.1 of the
3 guidelines. Therefore the applicable range in
4 this case is 60 to 71 months. The court will
5 now address any motions for downward departure,
6 and I also want to discuss the issue of an
7 upward departure, but are there any motions for
8 downward departure in this case, Mr. Lord?

9 MR. LORD: No, Your Honor.

10 THE COURT: Mr. Carlson?

11 MR. CARLSON: No, Your Honor.

12 THE COURT: Let me address the issue of an
13 upward departure from this guideline range. At
14 the initial sentencing hearing the court
15 upwardly departed from this range under the
16 sentencing guidelines. However, I did so
17 without the benefit of the Third Circuit
18 decisions that have come down since the Booker
19 decision was issued by the Supreme Court.

20 Specifically I issued this sentencing
21 without the benefit of the Third Circuit
22 decision in United States vs. Vampire Nation,
23 451 F.3d 189, a 2006 Third Circuit decision in
24 which the court distinguished between departures
25 under the guidelines and variances from the

1 guidelines.

2 After reviewing the transcript of the
3 sentencing proceeding, and I noted that there
4 was really some debate between Mr. Lord and
5 Mr. Clancy about exactly what the government was
6 requesting, it is now clear to me that the
7 government actually sought a variance from the
8 guideline range considering the factors set
9 forth in Section 3553, and therefore having
10 construed the government's request under the
11 prior proceeding as a request for a variance
12 under our current definitions provided by the
13 Third Circuit the court will not upwardly depart
14 under the sentencing guidelines in this case.

15 I also want to refer counsel to United
16 States vs. Colon, 474 F.3d 95, a 2007 Third
17 Circuit decision which states that a district
18 court need not rely on upward departures to
19 sentence a defendant above the recommended
20 guidelines range. When imposing such a sentence
21 a district court need only state on the record
22 what factors it is considering.

23 I will consider all relevant factors and
24 all of the material submitted previously and all
25 of the materials submitted to date in connection

1 with this resentencing proceeding when arriving
2 at an appropriate sentence for this defendant.
3 Now, Mr. Lord, having that by way of background,
4 recognizing that the court will not upwardly
5 depart within the guidelines but is reserving
6 the right to consider a variance above the
7 guideline range, do you have anything you wish
8 to add to the arguments that you have made
9 previously or your written materials?

10 And I do, by the way, want to complement
11 you on the thoroughness of your research.
12 It's rare that I have seen that much case law
13 applicable to a particular defendant's situation
14 and I want to thank you for bringing those cases
15 to the attention of the court. It was much
16 appreciated.

17 MR. LORD: Thank you, Your Honor.

18 THE COURT: Is there anything you would like
19 to add?

20 MR. LORD: Your Honor, I did have some
21 comments I was going to make. In light of the
22 review of the court the only new things, or I
23 guess I could refer to them new, there's two
24 things that I was going to mention today that I
25 had not mentioned before, either orally or in

1 court.

2 One thing I noted and was struck by in
3 preparing for today's proceeding is that the
4 intention that Congress gave to this particular
5 kind of criminal activity, I saw that back in
6 1998 when the guidelines manual came out if you
7 were a defendant being sentenced under the same
8 section of the guidelines as my client, you were
9 dealing and looking at a base offense level of
10 15.

11 Now that base offense level is up to 24,
12 just one level below voluntary manslaughter, and
13 nine levels above aggravated assault. So it's
14 clear in the years since 1998 until the time
15 that my client committed his offense, which
16 happened to be the year that Protect Act became
17 effective, that Congress has taken this criminal
18 activity into serious consideration and has
19 through the sentencing commission reached a
20 point where, you know, people who are committing
21 this criminal activity are already facing a very
22 lengthy sentence compared to what they were
23 facing prior to the sentencing guidelines.

24 I don't -- I'm a defense attorney. My
25 job in any particular case is to advocate the

1 position of my clients. I was a prosecutor for
2 four years, but that was a long time ago. I
3 don't have the type of vantage point that you,
4 Your Honor, has and the U.S. attorney and the
5 U.S. probation office, so I don't see the many
6 cases that come through the courts and get the
7 sense that Your Honor does about what kinds of
8 sentences are reasonable in the particular
9 cases.

10 I looked at the guidelines, I looked at
11 what Congress did, I looked at the recent case
12 law, and I looked at all the factors, both
13 aggravating as the court found and mitigating in
14 my client's case, and I tried to further an
15 argument that the amount of time given all of
16 the circumstances under the advisory guideline
17 range and in light of the facts of particular
18 cases where the defendants were sentenced in
19 those ranges or below it, I came to the
20 conclusion based on my experience that I would
21 be fairly representing to the court that a
22 guideline range sentence is a fair and
23 reasonable sentence, and I take that position
24 yet again today.

25 THE COURT: All right. Thank you, Mr. Lord.

1 Mr. Garcia, it's my understanding that you're
2 unable to stand for any lengthy period of time
3 because of an injury, and I'm happy to
4 accommodate you. So you need not stand at this
5 time. Do you have -- you have a right of
6 allocution, which gives you an opportunity to
7 add to anything that you have previously
8 presented to the court or that your attorney has
9 previously presented. You're not required to
10 say anything if you don't care to, but now would
11 be the appropriate time. You have my attention.

12 THE DEFENDANT: I would, Your Honor.

13 THE COURT: If you could move the microphone
14 towards Mr. Garcia, that would be appreciated.

15 THE DEFENDANT: First thank you very much
16 for letting me sit here. I had quite a long
17 period of time to think about the situation, and
18 the longer the time goes by I find it almost
19 unfathomable that I ever got involved in any
20 such activities, and obviously I'm very shameful
21 about it to say the least, and I just wanted to
22 say that it's had a great deal of impact and I
23 recognize that it is serious and I take it very
24 seriously also.

25 I appreciate having this opportunity to

1 come before the court and to let you know that
2 those activities are just something that is dead
3 and gone and away from me, and I see very
4 clearly how egregious it was, and I regret it
5 very much. It's had a great deal of impact not
6 only to me but I realize that the families
7 involved as well, and I only pray that they can
8 forgive me one day and I pray also to, of course
9 to my heavenly father in asking for forgiveness.

10 I have tried to, you know, lead a better
11 life now in spite of being imprisoned and every
12 day dedicated in prayer and try to be helpful to
13 others and try to put this behind me. As I
14 said, it has had a very severe and profound
15 effect on me, and not only on me but on my
16 family as well, all those that knew me, and I,
17 at this point my family has struggled because of
18 my continued imprisonment and, you know, my wife
19 is out on the street, we lost our home, and I
20 have a son, too, that is struggling out there,
21 and I just want to ask for a reasonable sentence
22 and that the court may show mercy towards me.

23 Help me to get back out on the street and
24 be able to help my family and be able to pursue
25 an upright life that I know I will do and will

1 promote, and I just feel very regretful and very
2 sorry about the events and the activities that
3 brought me to this point, and I just wanted to
4 express that to the court and again leave it in
5 your capable hands for a reasonable sentence.
6 Thank you.

7 THE COURT: All right. Thank you,
8 Mr. Garcia. Mr. Carlson?

9 MR. CARLSON: Yes, Your Honor?

10 THE COURT: What is the government's
11 position?

12 MR. CARLSON: Your Honor, the government's
13 position is that the hundred month sentence
14 originally imposed in this matter was a fair and
15 reasonable sentence under the extraordinary and
16 aggravating circumstances of this case. Your
17 Honor has aptly described the history of this
18 matter and I think has noted aptly that the
19 Court of Appeals opinion remanding this took
20 great pains to remand it so that this defendant
21 would receive every procedural opportunity to
22 address this issue, and the court has given the
23 defense months to do that and the defense has
24 done an admirable job as the court has noted
25 filing documents addressing the guideline

1 variance issues.

2 So the procedural requirements of that
3 remand have been fully met here by these
4 proceedings and by the great care and attention
5 the court has given to this case. The Court of
6 Appeals though in its remand made it clear that
7 it was not voicing any view on the ultimate
8 reasonableness of the sentence, instead
9 referring us all to the Court of Appeals
10 decision in Colon, which speaks to the fact that
11 a sentence, an upward variance need not go
12 through rigid ratcheting mathematics or some
13 formulaic approach to an assessment of the
14 sentence, but rather what the court must do,
15 what the parties must do, is look to the
16 touchstones standards of fairness set forth in
17 3553(a) of Title 18 and provide an explanation
18 of how a varied sentence meets those touchstones
19 standards, and that variation, if reasonable,
20 would stand scrutiny on appeal and reflect a
21 fair and just verdict and sentence of this
22 court.

23 The government believes that when one looks
24 at the facts of this case, facts that the court
25 is intimately familiar with and facts that have

1 been thoroughly detailed in the record, that the
2 hundred month sentence in this case was fair,
3 was just, was reasonable when one measures that
4 sentence against the standards defined by
5 Section 3553(a), that statute sets four
6 touchstones for a fair, reasonable, and just
7 sentence.

8 The first touchstone is that the sentence
9 must reflect the seriousness of this crime, and
10 when one considers the seriousness of this crime
11 and the need to promote respect for the law and
12 to provide for just punishment, there are a host
13 of aggravating factors, a constellation of
14 factors in this case that make it one of the
15 more extreme and egregious violations of this
16 type and a violation that warrants about upward
17 variance.

18 For example, Your Honor, as the court knows
19 from having seen cases of this type in the past,
20 many of these cases involve sexual contact
21 between individuals who are acquaintances. This
22 was a stranger statutory rape. Mr. Garcia
23 reached out two thousand miles to select a
24 14-year-old girl as a victim in this case, and
25 this case is unusual and darkly disturbing in

1 the way in which Mr. Garcia cultivated and
2 groomed his victim.

3 There is, the record is replete with an
4 extraordinary amount of grooming of this victim.
5 Mr. Garcia created deceit, lie upon lie as he
6 groomed this 14-year-old child for sex.
7 Mr. Garcia lied about who he was. Indeed his
8 victim never knew his true name. Mr. Garcia
9 lied about how old he was. He lied about what
10 he did. Mr. Garcia as part of an elaborate
11 grooming process created two alter egos in order
12 to cultivate this child as an object of sex.

13 Mr. Garcia's activities are darkly
14 disturbing in another respect. They are
15 thoroughly documented in voluminous e-mails, and
16 Mr. Garcia kept those e-mails, Your Honor. He
17 kept those e-mails, something that I believe
18 suggests the disturbing and disturbed nature of
19 Mr. Garcia. He was a collector not only of
20 children but he collected an elaborate grooming
21 process and he kept it. It had meaning for him.

22 Moreover, Your Honor, Mr. Garcia we know
23 from the e-mails was acutely aware of the
24 wrongfulness of his conduct. He described how
25 wrong his conduct is in the e-mails, and

1 Mr. Garcia engaged in elaborate preplanning for
2 his violation of this 14-year-old girl. As we
3 note from the presentence report, he began
4 taking sexual enhancement drugs a month before
5 he arrived in Pennsylvania to violate this
6 child.

7 Mr. Garcia's deceit involved not only
8 unprecedented deceit targeting his victim, but
9 deceit at his employer. As the court may
10 recall, Mr. Garcia told his employer that he was
11 coming to Pennsylvania to tend to a sick uncle,
12 and then Mr. Garcia when he arrived in
13 Pennsylvania was here for a number of days
14 providing his victim with gifts, with a cell
15 phone so he could contact her, staking out the
16 school and a residence.

17 Mr. Garcia also as I recall the facts, Your
18 Honor, on the date that he violated this child
19 called, impersonating a family member, to allay
20 the school's concerns about her absence from
21 school. The elaborateness of this planning is
22 something that is extreme and is extraordinary
23 and underscores the seriousness of this offense
24 and warrants the upward variance.

25 There are other aspects to the facts this

1 case that I think further enhance that
2 seriousness of the offense. Mr. Garcia as at
3 times in the presentence report and in these
4 proceedings characterized this as an isolated
5 incident, but a review of the e-mails that he
6 collected as part of this practice revealed that
7 he was corresponding with contacting no less
8 than seventeen people who had identified
9 themselves as minors during the year preceding
10 the violation of this child here in
11 Pennsylvania.

12 Once Mr. Garcia had thoroughly groomed his
13 victim, Your Honor, he travelled two thousand
14 miles to consummate this act, two thousand miles
15 and at the expense of hundreds of dollars.
16 This, Your Honor, underscores another aspect of
17 this offense, an aspect whose seriousness must
18 be considered when examining an upward variance.
19 The strength of the sexual compulsion that drove
20 Mr. Garcia to groom these children for sex, to
21 engage in elaborate deceit in order to secure
22 sex, was such a powerful compulsion that he
23 would travel thousands of miles at the expense
24 of hundreds of dollars to engage in this
25 conduct. I submit to you, Your Honor, when we

1 look at the first touchstone characteristic for
2 a fair, just, and reasonable sentence under
3 3553(a), that is the seriousness of the offense,
4 it is difficult to imagine a more serious
5 offense.

6 The second touchstone characteristic that
7 we are called upon by colon and by the statute
8 to consider in this sentencing environment is
9 the question of deterrence, and deterrence comes
10 in two forms, specific and general, and, Your
11 Honor, when you look at the nature of the dark
12 compulsion that drove Mr. Garcia to do what he
13 did, the fact that he corresponded with at least
14 seventeen people who identified themselves as
15 minors, and the extraordinary extent of the
16 grooming engaged in by this defendant, it is
17 clear that this was a crime fueled by an
18 insatiable sexual compulsion and that for
19 specific deterrence as to this defendant an
20 upward variance is fully warranted.

21 Moreover, for the class of predator out
22 there like Mr. Garcia who might be driven by
23 these dark compulsions to commit criminal acts,
24 in order to secure general deterrence of that
25 class of offender we believe that an upward

1 variance such as the one that the court
2 fashioned carefully at the original sentencing
3 is fully appropriate.

4 The third touchstone standard, Your Honor,
5 under Section 3553(a) is the need to protect the
6 public from further crimes of the defendant, and
7 when one considers that touchstone factor and
8 when one considers the undisputed fact that
9 Mr. Garcia corresponded not only with the child
10 he victimized here but with sixteen other
11 individuals who had identified themselves as
12 minors, this is a case that cries out for an
13 upward variance for the purpose of protecting
14 the public and protecting the most vulnerable of
15 the public, the most innocent of the public,
16 children.

17 The final of the four touchstone factors
18 under 3553(a) that this court is obliged to
19 consider in fashioning a sentence that is
20 reasonable is the need to provide ongoing
21 supervision and care for this offender, and in
22 that regard, Your Honor, I've emphasized to the
23 court the government's view that this offender
24 is in desperate need of long-term supervision
25 because of what the evidence reveals about the

1 powerful compulsion that would drive him to
2 crime and the extraordinary extent to which he
3 will allow those compulsions to lead him to
4 engage in behavior exploiting children.

5 Given what the record reflects about those
6 factors the government believes that an upward
7 variance in terms of incarceration is absolutely
8 essential to provide this defendant with ongoing
9 supervision and care and monitoring, because he
10 is, appears to be a man who is slaved to desires
11 that lead him to crime, and I would note that in
12 the presentence report it appeared to me that
13 when I looked at the paragraphs 56 through 58
14 which dealt with Mr. Garcia's mental health
15 history, that he minimized the nature of these
16 compulsions and their impact upon him,
17 describing the treatment that he was receiving
18 as episodic and situational because of the
19 situational depression, and characterizing his
20 encounter with the child he victimized here, a
21 child who incidentally I understand also finds
22 herself now in a homeless state, as isolated
23 episodes.

24 well, that just isn't correct. Mr. Garcia
25 corresponded with other children, and I think

1 the record reflects that his problems are vastly
2 more profound and his denials are just that, a
3 statement of denial. So recognizing the final
4 touchstone quality of a reasonable and just
5 sentence is the need to provide ongoing
6 supervision. The government believes that
7 that touchstone characteristic of sentencing
8 supports an upward variance and supports one
9 other variance.

10 Congress has seen fit to authorize the
11 court in the case of sexual offenders, men
12 driven by sexual compulsion, to impose lifetime
13 terms of supervised release, and in this case,
14 Your Honor, regardless of what the court's
15 judgment is as to a period of incarceration, and
16 recognizing the broad discretion the court has
17 in framing a reasonable sentence on the area in
18 the field of incarceration, the government would
19 urge this court to impose a lifetime term of
20 supervised release on Mr. Garcia to provide him
21 with the care he needs for the rest of his life
22 to prevent future acts of sexual exploitation of
23 children, to protect the public, and to
24 underscore the seriousness of this offense and
25 to provide through supervised release a lifetime

1 Damiclean sword of deterrence over this
2 defendant's head.

3 One of the beauties of our system of law,
4 Your Honor, is that the law changes as people
5 gain greater recognition and wisdom. The
6 federal sentencing guidelines that Mr. Lord has
7 aptly noted has over time increased the penalty
8 for sexual offenders. That increase in the
9 penalties that we have seen over time in the
10 guidelines and in legislation reflect the
11 growing awareness, the growing understanding,
12 and deepening appreciation of the fact that
13 sexual exploitation of children does untold
14 damage to our society, and that those who engage
15 in this exploitation engage in crimes like those
16 detailed by Mr. Garcia that are staggering in
17 their scope and their dimension and astonishing
18 in the inventiveness and the manipulative
19 quality of the crime.

20 As we have gained knowledge over time
21 Congress and the courts have recognized the need
22 for greater deterrence and greater punishment in
23 this vitally important field. The court's
24 sentence which was imposed of a hundred months
25 in the spring of this year reflected that

1 assessment in the government's view. It
2 reflected that sober and mature assessment of
3 this unique and uniquely disturbing consolation
4 of the facts in the defendant's case, and it
5 reflected a mature and sober assessment of the
6 touchstone qualities that define a reasonable
7 sentence.

8 The court has over the past months allowed
9 the defense the notice that he desired regarding
10 the penalties he could face and has provided him
11 with a chance to fully address those issues, but
12 at the end of the day, in the final analysis,
13 when these factors are taken into account the
14 government believes that on the merits of his
15 sentence the court's sentence of a hundred
16 months, an upward variance, was reasonable, was
17 fair, was just, was consistent with the statutes
18 as construed by the court, and the only other
19 thing that the United States would ask is that
20 the court reimpose that term of incarceration
21 and a lifetime term of supervised release.

22 Thank you.

23 THE COURT: Thank you, Mr. Carlson.
24 Mr. Lord, in light of the length of the
25 government's presentation I'll allow you some

1 additional time if there's anything else you
2 would like to add.

3 MR. LORD: Thank you, Your Honor. Yes, I'd
4 just like a few moments to respond to a couple
5 of the things that attorney Carlson had
6 mentioned on behalf of the United States
7 government. He began his argument before the
8 court here about the fact that my client
9 repeatedly lied about his identity, never
10 revealed his true name.

11 Although this wasn't -- well, let's put it
12 this way. He started out this case charged
13 under a portion of the guidelines that put him
14 in a position to be facing a base offense level
15 of 24, and then when the calculations were done,
16 in an effort to determine where to place his
17 case in the advisory guidelines he suffered a
18 two-level upward enhancement because he
19 misrepresented himself.

20 There was also mention made of the fact
21 that he flew two thousand miles to consummate
22 the relationship and that he started the
23 relationship two thousand miles from where the
24 victim lived. Obviously there was a computer
25 used in this case, so the distance wasn't really

1 a factor, and I don't know that the fact that he
2 flew two thousand miles rather than five hundred
3 miles or drove or flew is really a matter that
4 aggravates this particular case, but the fact is
5 that he did come over to Pennsylvania and he did
6 engage in a sexual act and he is getting
7 penalized for it because the base offense level
8 is 24 rather than 21 because he did that.

9 There is mention being made about the fact
10 that he took a sexual enhancement drug. I think
11 that evidence showed that my client purchased
12 the sexual enhancement drug before, a month
13 before he came over, and that one of the pills
14 was located when the police arrested him, but I
15 don't know that the government can make an
16 adequate argument that that's an aggravating
17 factor since by virtue of my client's age as
18 opposed to being a 25- or a 35-year-old if he's
19 going to engage in sex he may need the help of
20 such a drug to accomplish his goal, but the fact
21 that he's doing that in and of itself is not
22 aggravating. It just simply shows that he
23 intended to have sex when he came over here.

24 Mr. Carlson touched upon my client's
25 compulsion to have sex, his conversations with

1 other teenagers on the internet, and the need
2 for lifetime supervised release. I need not go
3 into the details of this, but a thorough
4 investigation was done in this case. My
5 client's background shows that he came from a
6 humble beginning, that he met his wife in 1970,
7 that he started working for Hewlett Packard in
8 1979. He worked there for 25 years until he
9 lost his job because of this case, and Hewlett
10 Packard found seven other computers at his
11 cubicle.

12 The government had an opportunity to review
13 and investigate his life prior to this offense,
14 and he's not charged with any other criminal
15 activity in this case. He is not charged with
16 taking multiple victims in this case. It is not
17 against the law, it may not seem appropriate,
18 but it's not against the law to chat on the
19 internet with teenagers, and he's not charged
20 with committing any sexual offenses against the
21 Protect Act or any other act as a result of his
22 conversations with both teenagers and adults
23 that took place that were found when they
24 confiscated his computer and found all those
25 instant messages.

1 There was mention made about calling in the
2 absence from school, grooming the victim for
3 sex. The court had an opportunity and so did
4 the United States government to view the cases
5 that have dealt with Protect Act violations
6 before and after United States vs. Booker, and
7 many of the elements that are present in
8 Mr. Garcia's case have been present in those
9 other cases as well, and the defendants ended up
10 getting either guideline sentences or below
11 guideline sentences.

12 I don't know that the government can today
13 advise the court and argue to the court that my
14 client needs a lifetime of supervised release
15 and that he's, that he groomed this individual
16 for sex. The argument has been all along what
17 actually did happen here. Obviously Mr. Garcia
18 was a married man with four children. Obviously
19 he engaged in a relationship on the internet and
20 then physically with a 14-year-old girl, and he
21 did so over a period of four months, which based
22 on my review of the case law seems like
23 something that happens often in these types of
24 cases, but he came over here and had sex with
25 her but I don't know that that was highly

1 unusual.

2 It appears to be actually a very usual
3 thing that happens, either an FBI agent or
4 another government agent is planning to meet
5 with a defendant, the point is the defendant is
6 coming over there to have sex in some of these
7 cases, they're not agents, they're actual
8 victims, and the person does have sex, and they
9 are penalized for it under the criminal
10 statutes.

11 I go back to my point, Your Honor, that
12 despite the spin that can be put on the case as
13 to how aggravating it is it appears usual, and
14 Mr. Garcia may need some help, but I believe the
15 case law indicates that you don't put somebody
16 in jail for a longer period of time or give them
17 an upward departure if they need help. You
18 order them to get help and order to continue
19 after release from prison.

20 Mr. Garcia is going to be in his sixties no
21 matter what sentence he walks out of here with
22 today, Your Honor, and he made his life with the
23 computer and it appears if he's even on five
24 years of supervised release there may be some
25 limitations on whether he can ever work with a

1 computer again, and maybe it will be found that
2 he shouldn't, but his life as he knows it and
3 has known it is gone. His retirement money is
4 gone. His ability to start a new living at his
5 age is basically gone. He's going to have to
6 register as a sex offender anyway when he gets
7 out of jail.

8 He's -- and he spent fourteen months on
9 home detention prior to being sentenced in this
10 case, which is better than jail and it can't be
11 used to give him credit, but he didn't have the
12 ability to walk around the block with his wife
13 when he was sitting in his home for fourteen
14 months. He didn't have the ability to work, and
15 he watched his wife go in and out the door every
16 day with the small amount of money she was
17 making, I think they said it was a thousand a
18 month, while he sat at home and did whatever he
19 could staying at home.

20 He was hooked up to an electronic bracelet.
21 His movements were severely curtailed, and again
22 I don't know -- I know that case law indicates
23 all the way back to 1995 when it was a case of
24 Janet Reno against the United States that you
25 don't get credit from the Bureau of Prisons for

1 pretrial release because they still consider it
2 release, but I believe it's another factor that
3 the court can consider in determining whether or
4 not the sentence within the guidelines is a
5 reasonable one. So we maintain that the range
6 that Mr. Garcia is looking at as a result of his
7 criminal violations is a reasonable one and
8 there is no need to go above that.

9 THE COURT: All right. Thank you.
10 Mr. Carlson, anything further.

11 MR. CARLSON: Your Honor, I've come to this
12 matter late in the day. I've had a chance to
13 review, the government knows the court has
14 looked at this thoroughly. It has been
15 thoroughly briefed by the defense. We are
16 confident in the judgment of the court and we
17 appreciate having had this chance to speak to
18 these issues. Thank you.

19 THE COURT: All right.

20 MR. LORD: And if I may, Your Honor, I
21 appreciate the time that you've given me, but my
22 client just reminded me about something that I
23 did seek to mention to the court, and that was
24 that, you know, at the detention hearing and
25 then as part of the presentence report there

1 were interviews done. My client had a
2 psychological evaluation done in July of 2004.
3 He was seeing a marriage and family therapist at
4 a department of psychiatrist in Kaiser
5 Permanente in California. Dr. Martin Williams
6 out in California came to a conclusion to a
7 reasonable degree of psychological certainty
8 that my client was not a risk to the victim or
9 to the public in this case, and both he and the
10 family therapist thought that he was low risk to
11 offend against the victim or anyone else in the
12 public and that those documents were made part
13 of the record as we went through this.

14 THE COURT: All right. Thank you, Mr. Lord.
15 Would Mr. Garcia be able to approach at this
16 time or --

17 MR. LORD: Yes, Your Honor.

18 THE COURT: Please approach. I meant that
19 physically could he approach. Pursuant to the
20 Sentencing Reform Act of 1984, and cognizant of
21 the advisory nature of the United States
22 sentencing guidelines, it is the judgment of the
23 court that the defendant, Arthur Garcia, is
24 hereby committed to the custody of the Bureau of
25 Prisons to be imprisoned for a term of 83

1 months. This term consists of 83 months on each
2 of counts 1 and 2, to be served concurrently.

3 The court recommends that the defendant be
4 evaluated for participation in the sex offender
5 program, sex offender treatment program at FCI
6 Butner if he so qualified. The court finds that
7 the defendant has the ability to pay a fine
8 below the applicable guideline range.

9 The defendant shall make restitution in the
10 amount of \$876 to Clara Stoner at the address
11 set forth in the presentence report pursuant to
12 Title 18 of the United States Code, Section
13 364(d)(5). The defendant is further ordered to
14 pay to the United States the sum of \$1,200,
15 consisting of a fine of \$500 and a special
16 assessment of \$100 on each count. The entire
17 financial penalty is due in full immediately and
18 shall be paid through the clerk of court.

19 Upon release from imprisonment the
20 defendant shall be placed on supervised release
21 for a term of five years. This term consists of
22 five years on each of counts 1 and 2, to be
23 served concurrently. Within 72 hours of release
24 from the custody of the Bureau of Prisons the
25 defendant shall report in person to the

1 probation office in the district to which the
2 defendant is released.

3 while on supervised release the defendant
4 shall comply with the standard conditions that
5 have been adopted by this court, and shall
6 comply with the following additional conditions.
7 First, the defendant shall have no contact with
8 Korena Stoner or any member of her family.
9 Second, the defendant shall participate in a sex
10 offender treatment program, which may include
11 risk assessment testing, counseling, and
12 therapeutic polygraph examinations, and shall
13 comply with all the requirements of the
14 treatment provider.

15 The defendant shall contribute to the cost
16 of the treatment in an amount to be determined
17 by the probation officer, and the treatment is
18 to be conducted by a therapist approved by the
19 probation officer. Third, the defendant shall
20 not associate with children under the age of 18
21 except in the presence of an adult who has been
22 approved by the probation officer. Fourth, as
23 directed by the probation officer the defendant
24 shall comply with the registration requirements
25 of the sex offender registration agency in any

1 state where he resides, he is employed, carries
2 on a vocation, or is a student.

3 Fifth, the defendant shall not use a
4 computer with any access to on-line computer
5 service without prior written approval of the
6 probation officer. This includes any internet
7 service provider, bulletin board system, or any
8 other private or public computer network. The
9 defendant shall also cooperate in the collection
10 of DNA as directed by the probation officer.

11 The court finds that the defendant poses a
12 low risk of future substance abuse and therefore
13 suspends the mandatory drug testing requirement.
14 The court recognizes that the defendant has
15 already served part of the term of imprisonment
16 imposed by this judgment. He will not be
17 required to re-serve this period. It is the
18 intent of the court that this judgment of
19 sentence relate back to the date of the original
20 judgment of sentence entered in January of 2006
21 and operate prospectively from that date. Any
22 condition of the original judgment of sentence
23 that has been fully or partially satisfied by
24 the defendant shall be credited towards the
25 judgment of sentence imposed today.

1 with respect to the statement of reasons,
2 after considering the arguments presented today
3 and at the original sentencing hearing, and
4 after considering those set forth in the
5 defendant's resentencing memoranda, the court
6 finds that an upward variance to the calculated
7 guideline range is warranted in light of the
8 purposes set forth in Title 18 of the United
9 States Code, Section 3553(a), including the
10 necessity of deterrence and just punishment,
11 promotion of the respect for the law, protection
12 of the public, avoidance of unwanted
13 disparities, and assurance of correctional
14 treatment for the defendant and restitution to
15 any victims of the offense, and this sentence
16 reflects this court's full consideration of all
17 factors relevant to the sentencing
18 determination, including, but not limited to,
19 the nature and seriousness of the offense, the
20 history and characteristics of the defendant,
21 the kinds of sentences available, and the
22 advisory range and policies prescribed by the
23 sentencing commission.

24 The court has determined that the
25 calculated guideline range does not adequately

1 take into consideration the nature and
2 seriousness of the defendant's conduct, nor
3 does it provide a just punishment or an adequate
4 level of deterrence. The extensive predator
5 conduct of the defendant and the extreme
6 influence that this educated married with four
7 children gentleman had on a -- strike that. The
8 extensive predatory conduct of the defendant and
9 the extreme influence that an educated, married,
10 56-year-old man with four children had on a
11 14-year-old child warrants a sentence above the
12 guidelines range.

13 Over the course of a few months the
14 defendant repeatedly instant messaged and
15 e-mailed the victim for purposes of encouraging
16 a sexual relationship. These messages were
17 explicit and the internet contacts encompassed
18 thousands of pages. The defendant knew his
19 conduct was criminal, even indicating to the
20 victim that their relationship could result in a
21 statutory maximum term of imprisonment of thirty
22 years and that as a result their relationship
23 must remain secret.

24 I note that it is particularly troubling
25 that the defendant went to the victim's school

1 bus stop to entice her to go with him to a hotel
2 and ultimately called the victim's school acting
3 as her father to excuse absences. For control
4 purposes the defendant gave the victim a cell
5 phone to maintain private contact with her and
6 he further enticed her with gifts of jewelry and
7 cash.

8 As aptly described by the government, this
9 grooming and cultivation of, this elaborate
10 grooming and cultivation of the victim is a
11 significant factor in the court's evaluation of
12 seriousness of the offense and its resulting
13 evaluation of an appropriate sentence. The
14 court notes that it previously credited the
15 information provided on victim impact during the
16 previous sentencing hearing.

17 At the same time the court must be
18 concerned with the history and characteristics
19 of the defendant and the need for unwanted
20 disparities. I have reviewed and taken into
21 consideration defense counsel's lengthy
22 memoranda concerning these issues. I also note
23 that the government has chosen not to respond to
24 the supplemental memoranda provided by defense
25 counsel, although the court postponed this

1 proceeding in order to provide the government
2 with ample opportunity to do so.

3 Although the court does not believe that
4 this defendant is incorrigible or incapable of
5 rehabilitation, the court notes that there is
6 always a concern about recidivism, especially in
7 cases of this nature, as well as the need to
8 protect the public from any recurrence of
9 dangerous predator conduct. Given all of the
10 factors, the court has determined that a
11 sentence of 83 months, a variance of twelve
12 months above the upper end of the guideline
13 range, is reasonable and not greater than
14 necessary to achieve sentencing objectives.

15 Mr. Garcia, you can appeal your conviction
16 if you believe that your plea was somehow
17 unlawful or involuntary, or there was some other
18 fundamental defect in the proceedings that was
19 not waived by your plea. You also have a
20 statutory right to appeal your sentence under
21 certain circumstance, particularly if you think
22 the sentence is contrary to law. With few
23 exceptions any notice of appeal must be filed
24 within ten days after sentence is imposed on
25 you.

1 If you are unable to pay the cost of an
2 appeal you may apply for leave to appeal *in*
3 *forma pauperis*. If you so request the clerk of
4 court will prepare and file a notice of appeal
5 on your behalf. Mr. Lord, anything further on
6 behalf of your client?

7 MR. LORD: No, Your Honor.

8 THE COURT: Mr. Carlson, anything further?

9 MR. CARLSON: No, Your Honor. Thank you.

10 THE COURT: Thank you very much. We are
11 adjourned. Good luck, Mr. Garcia.

12 (Hearing concluded at 2:25 p.m.)
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1 USA vs. Arthur Garcia

2 1:04-CR-00301

3 Re-sentencing Hearing

4 7 September 2007

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7
8 I hereby certify that the proceedings
9 and evidence are contained fully and accurately
10 in the notes taken by me on the trial of the
11 above case, and that this copy is a correct
12 transcript of the same.

13
14
15 s/ Wesley J. Armstrong

16 -----

17 Wesley J. Armstrong

18 Registered Merit Reporter

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23 transcript does not apply to any reproduction by
24 any means unless under the direct control and/or
25 supervision of the certifying reporter.